

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

TTAB

7-Eleven, Inc.

Opposer,

v.

Susan B. Bucenell

Applicant

Opposition No. 91177807
Filed on 6/13/2007
to application Serial No. 78/916,143
Filed on 6/24/2006

ANSWER


Applicant, Susan B. Bucenell, filed an intent-to-use application Serial No. 78/916,143 on 6/24/06, to register the trademark HEALTHY GULP for pet beverages, namely vitamin, mineral, and supplement enriched flavored and plain purified bottled water for cats and dogs (collectively "Pet Beverages"). Same was published in the Official Gazette of 2/13/07.

A 60 day extension to file an opposition was granted by the Board on 3/13/2007 to the Opposer, 7-Eleven, Inc. ("7-Eleven"). On 6/13/07, 7-Eleven filed an Opposition on under Trademark Act Section 2(d)-Priority and likelihood for confusion and Trademark Act Section 43(c)-Dilution.

Priority is not an issue as the Opposer's registrations are of record.

The following numbered paragraphs set forth the applicant's denial/affirmation of the petitioner's averments and defenses to same. These paragraphs correspond to the petitioner's numbered paragraphs:

1. Admit
2. Admit
3. Admit


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4. Without knowledge
5. Without knowledge
6. Admit
7. Denied-"...invaluable goodwill represented by each of its GULP Marks." How do you measure the value of "goodwill"- "the established custom and reputation of a business" ¹
Not established.
8. Admit-as decided in 7-Eleven, Inc. v. Wechler, Opposition No. 91117739, May 15, 2007.
9. Denied-See 12/13 for defenses.
10. Admit-with correction. Applicant's name is Susan B. Bucenell, **not** Sarah B. Bucenell.²
11. Denied-Applicant had made use of the trademark HEALTHY GULP prior to June 24, 2006.
12. Denied-See also note below. There are no similarities in the overall impression by the two marks; There are no similarities of the goods involved, one is a brand (HEALTHY GULP), and the other (7-Eleven's GULP Marks) is essentially a trademark used to identify a size or type of cup to contain one or more types of beverages trademarked and branded by other nationally recognized companies; The intent in applying for HEALTHY GULP was made in good faith and was not made in an effort to confuse consumers, nor was it made in an effort to resemble 7-Eleven cup sizes and types; Furthermore, there is no evidence of confusion; and the nature of the two goods are very different, as are their marketing and distribution channels-one is a pet product and one is a human product.

¹ Webster's English Dictionary, New Edition, 2003, page 128

² 7-Eleven's opposition refers to applicant as "Sarah B. Bucenell".

13. Denied-See also note below. There are many other trademarks of third parties which make use of the word "gulp" making it unlikely that the opposer's mark is eligible for a dilution cause of action; Overlapping channels of marketing and distribution have not been established and are unlikely in the future; Opposer's marks lack sufficient inherent distinctness and the duration and extent of use and advertising do not establish "fame".

Note-On May 15, 2007, The United States Trademark Trial and Appeal Board (TTAB) ruled on 7-Eleven v. Wechler, Opposition No. 9117739 [precedential] in favor of the applicant, Lawrence Wechler creator of GULPY, "portable animal water dishes and animal water containers sold empty". The opposition for this application was filed under the same grounds as the opposition for HEALTHY GULP. Further, both GULPY and HEALTHY GULP are pet products. Unlike GULPY and 7-Eleven's GULP Products, HEALTHY GULP is sold as a brand of beverage for pets, not a empty vessel used to contain or dispense beverage. Therefore, Applicant will cite the opinions from 7-Eleven v. Wechler and many of the cases cited within as defenses to 7-Eleven's opposition to HEALTHY GULP.

In view of the foregoing, Susan B. Bucenell is entitled to register the trademark HEALTHY GULP, as any such registration would not be damaging to 7-Eleven.

No filing fee required.

Please address all communications to Susan B. Bucenell, 30623 Bittsbury Court, Wesley Chapel, Florida, 33543, telephone number (813) 333-4284; email address sbucenell@tampabay.rr.com or healthygulp@tampabay.rr.com

Dated 7/20/2007

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read 'S. Bucenell', written in black ink.

Susan B. Bucenell

Applicant/Individual

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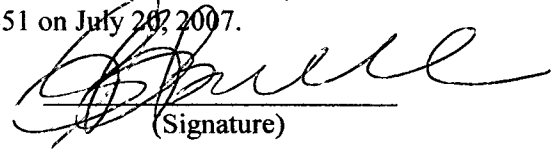
SUSAN B. BUCENELL,

Applicant.

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on July 26, 2007.

Susan B. Bucenell
(Name)


(Signature)

APPLICANT'S ANSWER TO OPPOSITION

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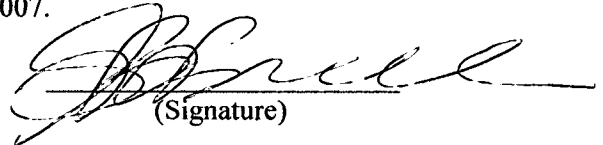
SUSAN B. BUCENELL,

Applicant.

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Susan B. Bucenell
(Name)


(Signature)

APPLICANT'S ANSWER TO OPPOSITION

*via
2nd
day
air
SDB*